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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/675,950	09/29/2000	Jorgen Topp Jorgensen	6136.200-US	1104

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EXAMINER

WITZ, JEAN C

ART UNIT	PAPER NUMBER
1651	//

DATE MAILED: 03/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



## DETAILED ACTION

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, 11, 14, 16-24, 26-28, drawn to a process for preparing an enzyme containing particle, classified in class 424, subclass 93.1.
- II. Claims 12-13, 25, drawn to a method for preparing an enzyme containing particle, classified in class 424, subclass 94.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group II and I are related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination of Group II as claimed does not require the particulars of the subcombination as claimed because the biomass is not required to be present. The subcombination has separate utility such as a probiotic.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant is reminded that 37 CFR 1.142(a), second sentence states: "[i]f the distinctness and independence of the invention be clear, such requirement will be made before any action upon the merits; however, it may be made at any time before final action in the case at the discretion of the examiner." This means the examiner should make a proper requirement as early as possible in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops.

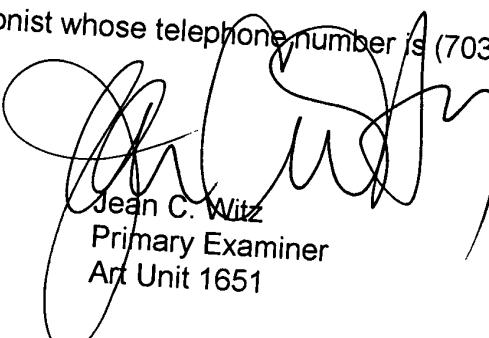
Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required. In the instant case, due to the different method steps and the different classification of the inventions and due to the fact that a comprehensive search is not limited solely to U.S. patents of a certain class and subclass, but in fact includes review of multiple and extensive non-patent literature databases, the Examiner has determined that there is a serious burden to search both inventions if restriction is not required.

Please note that the Examiner in this application has changed. Please refer to this Examiner in all future correspondence in the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean C. Witz whose telephone number is (703) 308-3073. The examiner can normally be reached on 6:30 a.m. to 4:00 p.m. M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (703) 308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

  
Jean C. Witz  
Primary Examiner  
Art Unit 1651

March 11, 2002